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**JUN 04 2019**

Clerk, U.S. District Court  
Missoula Division

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

**RASHAAD COLLINS,**

**Plaintiff,**

**vs.**

**MISSOULA COUNTY DETENTION  
CENTER; PLANNED  
PARENTHOOD OF MONTANA; and  
COURTNEY EVANS,**

**Defendant.**

**CV 18-196-M-DLC-JCL**

**ORDER**

United States Magistrate Judge Jeremiah C. Lynch entered his Order and Findings and Recommendation on April 3, 2019, recommending that the Court: (1) refuse to convert the Defendants' motion to dismiss to a motion for summary judgment; (2) grant the Defendants' motion to dismiss as to Plaintiff Rashaad Collins's Eighth Amendment claim and otherwise deny the motion; and (3) dismiss Collins's claims against Defendant Missoula County Detention Center with prejudice. (Doc. 16.) No party timely objected to the Findings and Recommendation, and accordingly all parties have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error

those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149–53 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been made.” *Wash. Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).

Having reviewed the Findings and Recommendation (Doc. 16), the Court finds no clear error. Because there is no dispute that Collins was a pretrial detainee at the relevant time, Collins cannot bring claims under the Eighth Amendment but only under the Fourteenth Amendment. (Doc. 16 at 2.) The Court does not find clear error in Judge Lynch’s recommendations to: (1) reject the Defendants’ attempt to convert their motion to dismiss into a motion for summary judgment; and (2) deny the motion as to Collins’s claims arising under the Fourteenth Amendment. (Doc. 16 at 2–3.) Finally, the Court finds no clear error in Judge Lynch’s recommendation that Defendant Missoula County Detention Center be dismissed on the grounds that it is immune from suit. (Docs. 4 at 2; 16 at 4.)

Accordingly, IT IS ORDERED:

(1) Judge Lynch’s Findings and Recommendation (Doc. 16) is ADOPTED IN FULL;

(2) The Court will not consider evidence submitted by the Defendants to disprove Collins’s allegations;

(3) The Defendants' motion to dismiss (Doc. 12) is GRANTED as to Collins's Eighth Amendment claim and DENIED in all other respects; and

(4) Defendant Missoula County Detention Center is DISMISSED WITH PREJUDICE.

DATED this 4<sup>th</sup> day of June, 2019



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Dana L. Christensen, Chief Judge  
United States District Court